Supreme Court, U.S.
FILED
MAR 16 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-535

In the Supreme Court of the United States

OCTOBER TERM, 1989

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

ELIZABETH STROOP, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

Cases:	Page
Chevron U.S.A. Inc. v. *NRDC, Inc.*, 467 U.S. 837 (1984)	12
Georgia Department of Human Resources, Doc. No. 88-40, Dec. No. 995 (Nov. 4, 1988)	8
Rose v. *Rose*, 481 U.S. 619 (1987)	6, 9
Sorenson v. *Secretary of the Treasury*, 475 U.S. 851 (1986)	3
Sullivan v. *Everhart*, No. 88-1323 (Feb. 21, 1990)	12
Todd v. *Norman*, 840 F.2d 608 (8th Cir. 1988)	6, 12, 14
Statutes:	
Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305	3, 15
Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 1145-1146	10
§ 2640	10
§ 2640(a)	10
§ 2640(c)	10
Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343	3
§ 101(a), 102 Stat. 2344-2345 (42 U.S.C. 666(b)(3))	13, 14
§ 102(a), 102 Stat. 2346 (42 U.S.C. 602(a)(8)(A)(vi))	1, 3, 6, 7
§ 103, 102 Stat. 2346 (42 U.S.C. 667(b)(2))	14
Social Security Act:	
Tit. II, 42 U.S.C. 401 *et seq.*:	
42 U.S.C. 405(j) (1982 & Supp. V 1987)	16
Tit. IV, 42 U.S.C. 601 *et seq.*:	
42 U.S.C. 601 *et seq.*	3
42 U.S.C. 602(a)(8)(A)(vi) (Supp. V 1987)	1, 7
42 U.S.C. 602(a)(26)(A) (1982 & Supp. V 1987)	3
42 U.S.C. 602(a)(27) (1982 & Supp. V 1987)	3
42 U.S.C. 602(a)(31)(D) (1982 & Supp. V 1987)	3

Statutes—Continued:	Page
42 U.S.C. 651 *et seq.*	2
42 U.S.C. 654 (1982 & Supp. V 1987)	3
42 U.S.C. 654(4) (1982 & Supp. V 1987)	3
42 U.S.C. 654(6) (1982 & Supp. V 1987)	3
42 U.S.C. 657 (1982 & Supp. V 1987)	13, 14
42 U.S.C. 657(b) (1982 & Supp. V 1987)	5, 7
42 U.S.C. 667(Supp. V 1987)	14
5 U.S.C. 8437(e) (3)	4
10 U.S.C. 1408(a) (2) (B) (i)	4
10 U.S.C. 1408(d) (1)	4
20 U.S.C. 1070a-6(15) (A)	4
20 U.S.C. 1070a-6(15) (A) and (L)	4
20 U.S.C. 1087vv(b) (1)	4
20 U.S.C. 1087vv(b) (1) and (12)	4
20 U.S.C. 1087vv(c) (1)	4
20 U.S.C. 1087vv(c) (1) and (12)	4
26 U.S.C. 6103(*l*) (6) (1982 & Supp. V 1987)	4
26 U.S.C. 6103(*l*) (8) (1982 & Supp. V 1987)	4
29 U.S.C. 1056(d) (3) (B) (ii) (I)	4
43 U.S.C. 1606(h) (1) (c) (i) (Supp. V 1987)	4
Va. Code Ann.:	
§ 20-107.2(2)	15
§ 20-108.1	15
§ 20-108.2(D)	15
§ 20-108.2(E)	15
Miscellaneous:	
Black's Law Dictionary (5th ed. 1979)	4
49 Fed. Reg. 35,590 (1984)	16
50 Fed. Reg. 19,643 (1985)	14
54 Fed. Reg. 37,868 (1989)	14
H.R. Conf. Rep. No. 925, 98th Cong., 2d Sess. (1984)	16
H.R. Rep. No. 527, 98th Cong., 1st Sess. (1983)	15
1 Office of Child Support Enforcement, U.S. Dep't of Health and Human Services, Sixth Ann. Rep. to Congress (1981)	5
S. Rep. No. 387, 98th Cong., 2d Sess. (1984)	14
The Random House Dictionary of the English Language (2d ed. 1987)	4

In the Supreme Court of the United States

OCTOBER TERM, 1989

No. 89-535

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

ELIZABETH STROOP, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

---

1. This case concerns the meaning of the term "child support payments" in the AFDC disregard for "child support payments." 42 U.S.C. 602(a)(8)(A)(vi) (Supp. V 1987 & 102 Stat. 2346). In our opening brief, we showed that the term "child support" in the Social Security Act invariably refers to payments from absent parents and not to Social Security benefits (Gov't Br. 13-15); that the current version of the AFDC child support disregard explicitly refers to "payments * * * by the absent parent"

(*id.* at 15-16); that the problem of obtaining payments from absent parents has long been a central issue in the administration of the AFDC program (*id.* at 18-20); and that, to the extent there is ambiguity in the statutory language, the Secretary's interpretation is entitled to deference (*id.* at 22-29).

Respondents' principal contention is that the "plain meaning" of the term "any child support payments" in the AFDC child support disregard requires inclusion of Social Security child's insurance benefits within the disregard. Resp. Br. 11-16. As respondents put it, "Congress's intent in this instance can be determined unqualifiedly from the text of the statute itself." *Id.* at 11. Despite this "plain meaning" argument, however, respondents are unable to point to a single instance in which a federal statute refers to Social Security child's insurance benefits as "child support." In contrast, in our brief, we pointed to literally dozens of examples in other statutory provisions where the term "child support" is used to refer to payments from absent parents and not to refer to Social Security benefits of any kind. See Gov't Br. 13-15 & n.10, 17 n.16, 21.

Although respondents fail to point to any federal statutes supporting their "plain meaning" argument, they seek to minimize the significance of these many other statutory provisions. In response to twenty-two references to "child support" in the Social Security Act itself that clearly refer to parental payments and not Social Security benefits (Gov't Br. 13 n.10), respondents maintain that each reference "deal[s] with some aspect or other of the IV-D collection system." Resp. Br. 22.[1] This scarcely undermines the interpre-

[1] Title IV-D refers to the Child Support Enforcement section of the Social Security Act (42 U.S.C. 651 *et seq.*). Title IV-A refers to the AFDC section of the Social Security Act (42 U.S.C. 601 *et seq.*). An AFDC recipient must assign child support rights to the State (42 U.S.C. 602(a)(26)(A)) (1982 & Supp. V 1987), and the State is responsible for attempting to collect child support payments from the absent parent (42 U.S.C. 654 (1982 & Supp. V 1987)). (Title IV-D services are also available to non-AFDC recipients. 42 U.S.C. 654(6) (1982 & Supp. V 1987)).

tive significance of the fact that Congress employed a term—"child support"—with an established meaning in the context of those other Social Security Act provisions. See *Sorenson* v. *Secretary of the Treasury*, 475 U.S. 851, 860 (1986) ("The normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning.") (internal quotation marks omitted).[2] What is more, respondents do not address the fact that the Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343, which contains the current version of the child support disregard (§ 102(a), 102 Stat. 2346), is replete with references to "child support" that clearly refer to payments from absent parents and not to Social Security benefits (Gov't Br. 17 n.16); nor do respondents address the fact that the Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305, which were passed contemporaneously with the child support disregard in 1984, is similarly replete

[2] Respondents' statement also is not entirely correct. The first five citations in our brief (at 13 n.10) are to provisions from Title IV-A of the Social Security Act (the AFDC section, where the child support disregard itself is found), and one of them does not concern IV-D at all. See 42 U.S.C. 602(a)(31)(D) (1982 & Supp. V 1987). The IV-A and IV-D programs, moreover, are closely related and contain numerous cross-references. See, *e.g.*, 42 U.S.C. 602(a)(27) (1982 & Supp. V 1987); 42 U.S.C. 654(4) (1982 & Supp. V 1987).

with references to "child support" that also refer to payments from absent parents and not to Social Security benefits (Gov't Br. 21). In addition, numerous other federal statutes likewise employ the term "child support" to refer to payments from absent parents and not to Social Security benefits.[3] Respondents essentially have no response to the enormous interpretative weight generated by the consistent use of the term in other federal statutory contexts.[4] The meaning that respondents would discern

[3] See, *e.g.*, 5 U.S.C. 8437(e)(3); 10 U.S.C. 1408(a)(2)(B)(i); 10 U.S.C. 1408(d)(1); 20 U.SC 1070a-6(15)(A); 20 U.S.C. 1087vv(b)(1); 20 U.S.C. 1087vv(c)(1); 26 U.S.C. 6103(*l*)(6) (1982 & Supp. V 1987); 26 U.S.C. 6103(*l*)(8) (1982 & Supp. V 1987); 29 U.S.C. 1056(d)(3)(B)(ii)(I); 43 U.S.C. 1606(h)(1)(C)(i) (Supp. V 1987).

Three of these provisions separately enumerate "child support" and "social security benefits" as distinct categories. See 20 U.S.C. 1070a-6(15)(A) and (L); 20 U.S.C. 1087vv(b)(1) and (12); 20 U.S.C. 1087vv(c)(1) and (12).

[4] In an apparent effort to shift the focus from the consistent use of the term "child support" in other statutory provisions, respondents repeatedly state that our interpretation rests on *Black's Law Dictionary* (Resp. Br. 19, 24, 26) and the "'essence of child support'" (*id.* at 9, 24, 26), even though our opening brief cites *Black's Law Dictionary* (5th ed. 1979) once (Gov't Br. 13 n.9) and never uses the term "essence of child support" at all. Proceeding from this mischaracterization, respondents criticize the use of a legal dictionary (Resp. Br. 19) and contend that "authorities of general reference" are more persuasive (*id.* at 20). Even if respondents' premises are accepted, the fact is that "child support" has the same meaning in non-legal dictionaries that it has in legal dictionaries. See *The Random House Dictionary of the English Language* 358 (2d ed. 1987) (unabridged) ("child support" defined as "money paid for the care of one's minor child, esp. payments to a divorced spouse or a guardian under a decree of divorce").

is not only not plain, it is contraindicated by these other statutory provisions.[5]

Respondents further maintain that their "plain meaning" argument is supported by the relationship between the term "any child support payments" and the phrase "(including support payments collected and paid to the family under section 657(b) of this title)." According to respondents, interpreting the term "child support payments" to mean payments from absent parents and not to include Social Security benefits is inconsistent with the "plain meaning" because such a reading embraces only the payments included by the parenthetical, and suggests no broader scope for the term "any child support payments." See, *e.g.*, Resp. Br. 17 (Secretary's interpretation "arbitrarily limits the disregard to IV-D pass-through payments"). As we pointed out in our opening brief (at 18), however, some payments from absent parents are received directly by AFDC households and are not "collected and paid to the family" through the IV-D agency. These direct payments from absent parents had been brought to Congress's attention by the Secretary as early as 1981.[6] Thus, the "plain meaning" of the relationship between the term "any child support payments" and the parenthetical, which "includ[es]" payments collected and

[5] In contrast to respondents' reliance on "plain meaning," the court of appeals concluded that "Congress has offered no answer to this question." Pet. App. 8a-9a.

[6] See 1 Office of Child Support Enforcement, U.S. Dep't of Health and Human Services, Sixth Annual Rep. to Congress 26 (1981) (describing the procedure for "the treatment of assigned child support payments received directly and retained by AFDC applicants or recipients").

received by the State, is entirely consistent with the conclusion that the term "child support payments" refers to payments from absent parents. See *Todd* v. *Norman*, 840 F.2d 608, 612-613 (8th Cir. 1988).[7]

Rejecting the significance of the meaning of "child support" in other federal statutory provisions, respondents maintain that the "plain meaning" of the term—and its supposed inclusion of Social Security child's insurance benefits—is settled by state law. Resp. Br. 20-21. However, the state law treatment is far less uniform—and indeed is far more complex—than respondents suggest. As the Eighth Circuit concluded, "review [of the state cases] indicates only that, under extenuating circumstances, some state courts find it equitable to treat Child's Insurance Benefits as a *substitute* for child support payments. * * * Others have reached a contrary result. * * * If Child's Insurance Benefits simply were 'child support payments,' the lengthy discourse on equity each of these courts engages in would be unnecessary." *Todd* v. *Norman*, 840 F.2d at 611.[8] Clearly the body of state law is inadequate to imbue "child support payments" with the "plain meaning" championed by respondents.

---

[7] Respondents also rely on the use of the word "any." Resp. Br. 12-13. The word "any," however, cannot enlarge the category of the word (or words) it modifies, any more than "all," "each," or "every" could enlarge a category that it modified. The question before the Court remains the meaning of the term "child support payments," not the meaning of the word "any."

[8] Cf. *Rose* v. *Rose*, 481 U.S. 619, 622 (1987) (noting that state court did not allow Social Security child's insurance benefits to satisfy absent parent's child support obligation).

2. Respondents also minimize the significance of the fact that the current disregard provision, as amended in 1988, explicitly refers to payments from "the absent parent." Because the judgment under review is prospective, the amended disregard is directly relevant to this case. See Gov't Br. 15 n.13. The text of the current disregard (to be codified at 42 U.S.C. 602(a)(8)(A)(vi)) bears repeating:

> [I]n making the [AFDC eligibility and assistance] determination under paragraph (7), the State agency
>
> * * * *
>
> (vi) shall disregard the first $50 of any child support payments for such month received in that month, and the first $50 of child support payments for each prior month received in that month if such payments were made *by the absent parent* in the month when due, with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 657(b) of this title). (emphasis added)

In response to this explicit reference to "payments * * * by the absent parent," respondents observe that the "absent parent" language was inserted for a different purpose. Resp. Br. 15. This is correct,[9]

---

[9] As we explained in our opening brief (at 16 n.14), the 1988 amendment clarifies the disregard treatment for payments received in a different month from the month in which they were due. Thus, as respondents point out (at 15), the amendment clarifies that a lump sum payment which includes child support payments due in prior months is entitled only to a single $50 disregard; the amendment also clarifies that, when the absent parent makes a timely payment, that payment receives a disregard even if there is a delay in receipt of the payment.

but beside the point. Respondents cannot overcome the fact that the explicit language of the disregard now refers to "payments * * * by the absent parent," and contains no indication that the "child support payments" at issue are intended to encompass other payments, such as Social Security benefits.[10]

3. Respondents also maintain that the "plain meaning" of the child support disregard includes Social Security child's insurance benefits because of the character and history of those benefits. Resp. Br. 16-19. Respondents seek to rely on a quotation from the HHS Departmental Appeals Board decision that we lodged with the Court. *Id.* at 17. However, respondents quote the passage out of context and ignore the Board's explicit repudiation of the argument that child's insurance benefits should be included in the child support disregard.[11] Rather than

[10] Respondents' suggestion (at 15) that, under the amended version of the disregard, Social Security child's insurance benefits should be understood to receive the same treatment, for purposes of arrearages and timeliness (see n.9, *supra*), as payments from absent parents, does not comport with the plain language of the current disregard concerning prior payments by "the absent parent."

[11] See, *Georgia Department of Human Resources*, Doc. No. 88-40, Dec. No. 995 (Nov. 4, 1988) at 7 ("[I]t is inherently less reasonable to stretch the term 'child support payments' to cover all imaginable benefits to children, than it is to read the term to fit, as it easily does, into an existing specific structure."); *id.* at 8 (The "Social Security benefits in question are paid as a matter of statutory right regardless of any child support obligation and even in the absence of such an obligation. This is inconsistent with the common understanding of what child support is generally (and particularly in the Title IV-D program), and strongly suggests that Congress would have been more explicit had it intended" to include Social Security benefits in the disregard.); *ibid.* ("If the

supporting respondents' position, the Appeals Board decision emphatically rejects it.

Respondents also seek to rely on decisions of this Court and on the legislative history of the Social Security child's insurance benefits program to establish that the benefits are commonly understood as "child support." Resp. Br. 17-19. As we discussed in our opening brief (at 14-15), the fact that child's insurance benefits replace the support of a parent who is dead, disabled, or retired—as confirmed by the decisions of this Court and the legislative history of the child's insurance benefits program—does not mean that the benefits are ordinarily encompassed in the meaning of the term "child support," or that the terms "child's insurance benefits" and "child support" are interchangeable. As we have previously pointed out, no provision in the Social Security Act—neither the child's insurance benefit part of Title II nor the AFDC part of Title IV nor the Child Support Enforcement part of Title IV—suggests that child's insurance benefits are included in the term "child support."[12] In view of respondents' emphasis on the settled meaning of Social Security child's insurance benefits, it is surprising that respondents are unable

benefits in question are treated as child support, then problems arise concerning how the benefits would be treated under other provisions of the Social Security Act").

[12] Respondents cite *Rose* v. *Rose*, *supra*, and claim support from its holding that a state court may compel a veteran to use veterans' benefits to satisfy a state child support award. As with child's insurance benefits, however, particular state determinations that certain payments may be used to satisfy an absent parent's child support obligations are entirely different from a conclusion that such payments are automatically encompassed within Congress' use of the term "child support payments."

to point to a single statutory provision that includes Social Security child's insurance benefits as "child support." [13]

4. Respondents maintain that Social Security child's insurance benefits should be included in the child support disregard because of the legislative history of the disregard. According to respondents, the legislative history suggests that "its primary purpose was to lessen the impact of sibling deeming on the affected families" (Resp. Br. 30), and that "its purpose was to mitigate the harsh effects of the new mandatory filing rule." *Id.* at 32. We readily acknowledge that one aspect of the disregard—as of all AFDC disregards—is that it mitigates hardship, and the operation of this disregard clearly mitigates some hardship for affected families. Respondents proceed, however, as if the disregard, by its terms, provides an additional $50 per month for each family adversely affected by the family income requirement. The disregard does nothing of the kind. It applies to a very large group of AFDC families who were not affected at all by the family income requirement—those families who did not exclude siblings, but who, as a result of the disregard, received an

[13] As noted in our opening brief (at 15 n.12), moreover, the conventional distinction between "child support" and Social Security benefits can also be seen in respondents' complaint, which repeatedly referred to "child support payments or Social Security benefits," "child support or OASDI benefits," and similar phrases depicting "child support" and "Social Security benefits" as distinct items. See J.A. 19, 21, 31, 32, 34. As also noted in our opening brief (at 15), Section 2640 of the Deficit Reduction Act of 1984 (Pub. L. No. 98-369, 98 Stat. 1145-1146), which includes the disregard provision, itself refers to "child support payments" in the disregard provision (§ 2640(c)) and to "benefits provided under title II" in the family income requirement (§ 2640(a)).

additional $50 per month if an absent parent paid his child support. In contrast, the disregard does not apply to some families who *were* adversely affected by the family income requirement—those with previously excluded children who received income from a source other than "child support payments." Thus, respondents' insistence that the disregard must be interpreted as a device to mitigate the hardship of the family income requirement—and must be extended to Social Security child's insurance benefits—is at odds with the actual operation of the disregard. See Gov't Br. 26 n.29.[14]

At the same time, respondents completely reject the significance of the longstanding emphasis in the AFDC program on the problem of obtaining payments from absent parents, including the only prior instance of a child support disregard. See Resp. Br. 33-36. It surely is significant, however, that Congress chose a disregard patterned closely after the only prior child support disregard (even to the extent that they both used a benchmark of $50 per month)—and that the purpose of that prior disregard was explicitly to provide an incentive to encourage cooperation by custodial parents in obtaining payments from absent parents. See Gov't Br. 19-20, 25-26. Viewed in the context of the consistent emphasis in the AFDC

[14] Respondents quote from the Secretary's brief in *Bowen* v. *Gilliard* (Resp. Br. 29), but fail to acknowledge that the quoted comments were in the context of a case concerning only payments from absent parents and that the comments described the operation of the child support disregard in that context. Indeed, the Secretary explicitly drew a distinction between "child support" and "types of income other than child support * * * such as social security benefits." Reply Br. for the Federal Appellant, *Bowen* v. *Gilliard*, Nos. 86-509 and 86-564, at 8.

program on the central problem of obtaining payments from absent parents, including a prior experiment with a child support disregard, the passage of the child support disregard in 1984 can readily be seen as having as one purpose to encourage the payment of child support payments from absent parents. *Todd* v. *Norman*, 840 F.2d at 611-612.[15]

5. As we discussed in our opening brief (at 22-29), to the extent that the statutory language is ambiguous, the Secretary's interpretation is entitled to deference under settled principles of judicial review. See *Chevron U.S.A. Inc.* v. *NRDC, Inc.*, 467 U.S. 837, 843 (1984) ("[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute"); *Sullivan* v. *Everhart*, No. 88-1323 (Feb. 21, 1990), slip op. 5-6. Respondents, however, raise a series of scattered objections to the Secretary's interpretation, and maintain that deference is not appropriate. Respondents contend that the Secretary has never issued a definition of "child support payments" which would exclude Social Security child's insurance benefits. Resp. Br. 24-25. They ignore, however, the fact that the Secretary promptly issued an interpretation of the

[15] Respondents' statement that "[t]he Secretary * * * seems to be unable to accept that the legislative package was not enacted as proposed" (Br. 9), i.e., without the child support disregard, is mystifying. The child support disregard is now a substantial element of the AFDC program, costing the program (according to HHS records) close to $279 million in fiscal year 1989. The issue in this case is whether the disregard should be expanded to include certain Social Security benefits, but there is no question that, at the Secretary's direction, a disregard is now in effect for payments from absent parents.

child support disregard soon after it was enacted. See Gov't Br. 6-7, 23-24. The Secretary enumerated the payments that were entitled to be *included* in the disregard (parental payments of various kinds, including those collected and distributed by the State pursuant to 42 U.S.C. 657 (1982 & Supp. V 1987)). The Secretary had no obligation to enumerate all payments *not* entitled to the disregard, and the fact that he did not do so is hardly sufficient to deny the usual deference accorded the official charged with implementing a complex federal statute.

Respondents also claim that the difference in payment—Social Security benefits are paid every month by the federal government, whereas parental child support payments depend on the compliance and resources of an absent parent—is immaterial because Social Security benefits are derived from a parent's earnings. Resp. Br. 25. At the very least, however, respondents must concede that the difference in payments leads to a significant difference in the operation of the disregard for the two kinds of payments. Because the Social Security benefits are paid and guaranteed by the federal government, the disregard would operate automatically, and the Social Security benefits recipient would receive a $50 disregard each month; because parental child support payments are dependent on the compliance, resources, and ability of an absent parent, the payment from month to month is uncertain, and operation of the disregard is equally uncertain.[16]

[16] Respondents' contention (at 26) that the Family Support Act's requirement (§ 101(a), 102 Stat. 2344-2345) that IV-D collections be accomplished through mandatory wage assignments (to be codified at 42 U.S.C. 666(b)(3)) will make them indistinguishable from federally paid Social Security benefits is incorrect. Although it is to be hoped that

Respondents also contend that a child's "need" is no longer a factor in parental child support determinations (Br. 28); this statement is simply incorrect[17]

---

the Family Support Act amendment will have the efficacy that respondents suppose, child support payments will nevertheless remain contingent from month to month on the absent parent's willingness and ability to obtain employment and his compliance with applicable requirements in his dealings with his employers; payment of Social Security child's insurance benefits, in contrast, has no such contingency. (Additionaly, not all employed absent parents receive payroll "wages" within the scope of 42 U.S.C. 666(b)(3); many are self-employed). As we pointed out in our opening brief, moreover, child support obligations generally terminate upon the parent's death (unless there is a special provision of state law or agreement between the parties to the contrary); Social Security child's insurance benefits, in contrast, are triggered by the insurd parent's death. See Gov't Br. 28; *Todd* v. *Norman*, 840 F.d at 610 n.2.

[17] Respondents' statement, which apparently relies on the requirement in 42 U.S.C. 667 that States establish child support guidelines, is wrong on several levels. First, the guielines themselves are supposed to reflect calculation of a child's needs. See, *e.g.*, S. Rep. No. 387, 98th Cong., 2d Sess. (198) 40 (guidelines are intended to ensure "reasonable consideation * * * to the needs of the child"); 50 Fed. Reg. 19,63 (1985) (guideline factors should include "the number ad needs of dependents"); 54 Fed. Reg. 37,868 (1989) (guielines should "provide for coverage of the child or childre's health care needs"). Second, as a result of the Family Support Act (Pub. L. No. 100-485, § 103, 102 Stat. 2346), the guielines now establish a "rebuttable presumption," which may e rebutted by a written finding that they are "unjust or inappropriate in a particular case" (to be codified at 42 U.S.C. 667(b)(2)); failure to meet a child's needs obviously is n important factor in considering whether the guidelines re "unjust or inappropriate in a particular case." Third, contrary to respondents' contention, the Virginia statute actuay reflects the continuing importance of a child's needs in chd

Finally, respondents object that the Secretary's determination to allow the disregard for voluntary payments and for spousal payments from absent parents is "irrational" and "startling." Br. 38. Both decisions, however, are consistent with the Secretary's determination that the disregard for "child support payments" applies to payments from absent parents. With respect to spousal support payments, they receive the disregard only if they are inseparable from child support payments—that is, if the absent parent's support obligations to the child and the spouse have been established, if the child and the spouse live in the same household, and if the child support is being collected along with the spousal support (see Gov't Br. 7 n.3); it was reasonable for the Secretary to conclude that, in such circumstances, spousal support payments from an absent parent should be treated like the child support payments with which they are joined.[18] With respect to voluntary child

---

support awards. The guidelines themselves require the addition of any "extraordinary medical and dental expenses" incurred by the child (Va. Code § 20-108.2(D)), and "childcare costs incurred on behalf of the child" (Va. Code § 20-108.2(E)); furthermore, the state court is required to consider a number of factors, including the individual child's needs, in determining whether to apply the guidelines or reject them (Va. Code § 20-107.2(2); § 20-108.1).

[18] The administrative interpretation quoted by respondents (at 38-39) cites Section 12 of the Child Support Enforcement Amendments, which requires States to collect spousal support payments with child support payments when the conditions discussed above are met. That provision was clearly enacted to facilitate the collection of child support, and is consistent with congressional treatment of spousal support for child support purposes. See, *e.g.*, H.R. Rep. No. 527, 98th Cong., 1st Sess. 46 (1983) ("Present law permits States to enforce spousal support obligations in instances where the support order combines both child support and spousal support in the

support payments, moreover, the fact that payments are made voluntarily by an absent parent clearly does not alter the character of the payments.[19] The application of the disregard to absent parents' spousal support payments (when they are collected with child support payments), and to absent parents' voluntary support payments, thus is neither irrational nor startling, and is certainly an inadequate basis for overriding the deference due the reasonable interpretation of the official charged by Congress with administering the complex AFDC, Title II, and Child Support Enforcement programs.

---

same order so that specific amounts for child support are not set forth. Without such a provision, States would be unable to enforce support for children in cases where orders provided for such support. The bill requires States to enforce spousal support in these instances, effective upon enactment."); H.R. Conf. Rep. No. 925, 98th Cong., 2d Sess. 50 (1984).

[19] Respondents' contention (Br. 39-40) that, if an absent parent is a representative payee of child's insurance benefits and the absent parent pays the money to the AFDC household, the provision of the Social Security benefits should be treated as a "voluntary payment" is incorrect. If an absent parent were the representative payee for Title II benefits, the provision of the funds for the child's use and benefit would be, not a voluntary support payment from an "absent parent" (49 Fed. Reg. 35,590 (1984)), but the mandatory discharge of a fiduciary responsibility for the expenditure of federal funds. 42 U.S.C. 405(j) (1982 & Supp. V 1987). Indeed, respondents' hypothetical underscores the difference between Social Security child's insurance benefits and "child support payments" in the context of the Social Security Act—if the child's insurance benefits in that context were considered voluntary "child support payments," they would be subject to the full range of statutory and regulatory requirements for such payments.

For the foregoing reasons, and for those stated in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

KENNETH W. STARR
Solicitor General
Department of Justice

MARCH 1990

☆ U. S. GOVERNMENT PRINTING OFFICE: 1990 282203 810